OFFICE COPY

APPENDIX

DEC 1 197
E. ROBERT SEAVER, C

Supreme Court of the United States

TERM, 1971

No. 70-5106

RICHARD GRAYNED,

Appellant,

—v.—

CITY OF ROCKFORD

APPEAL FROM THE SUPREME COURT OF ILLINOIS

FILED APRIL 8, 1971
PROBABLE JURISDICTION NOTED OCTOBER 12, 1971

Supreme Court of the United States

TERM, 1971

No. 70-5106

RICHARD GRAYNED,

Appellant,

—v.—

CITY OF ROCKFORD

APPEAL FROM THE SUPREME COURT OF ILLINOIS

INDEX

	Page
Complaint against Richard Grayned, charging violation of Section 19.2(a)	1
Complaint against Richard Grayned, charging violation of Section 18.1(i)	2
Motion to amend the complaint by addition of additional charge	3
Motion to dismiss	4
Supplemental brief in support of defendants' motion to dismiss	11
Attachment—letter from Larry E. Ohlson, Assistant City Attorney to Circuit Court Magistrate Richard N. DeGunther, dated September 8, 1969	13
Letter Opinion of Judge DeGunther, dated September 16, 1969	16

	Page
Verdicts of Guilty by the Jury	19
Court's Memorandum of Rulings on Motions	21
Opinion of Illinois Supreme Court	22
Judgment	27
Appellant's petition for rehearing in the Illinois Supreme Court	29
Amendment to petition for rehearing	33
Order granting motion for leave to proceed in forma pauperis	35
Order noting probable jurisdiction	35

IN THE CIRCUIT COURT OF THE
17th JUDICIAL CIRCUIT

WINNEBAGO COUNTY, ILLINOIS

CITY OF ROCKFORD

MAGISTRATE DIVISION

COMPLAINT

Complaint and information by the City of Rockford, Illinois hereinafter called the complainant, being duly sworn, on oath says that on or about April 25, 1969, in the said Municipality, County and State, the offense of Wilfully causing diversion of good order of public school in session in violation of Section 19.2(a) Art. _____ of Chapter 28 of the City Ordinances of said Municipality, was committed, and that affiant has reasonable grounds to believe and does believe that Richard Dean Grayned hereinafter called the defendant, then and there was guilty of committing the same, in this, to wit: that While on school grounds and while school was in session, did wilfully make and assist in the making of a diversion which tended to disturb the peace in good order of the school session and class thereof. Contrary to the form of the statute in such case made and provided and against the peace and dignity of the People of the said Municipality and the said complaint therefore prays that a warrant may be issued for the arrest of the said defendant, and that he may be dealt with according to law.

Complainant City of Rockford by James L. Donohue

Address 401 West State Street (Room 203)
Rockford, Illinois 61101

Phone (815) 962-7083

Signed and sworn to before me _____, 19__

_____ [SEAL]

Magistrate

IN THE CIRCUIT COURT OF THE
17th JUDICIAL CIRCUIT
WINNEBAGO COUNTY, ILLINOIS

CITY OF ROCKFORD
MAGISTRATE DIVISION

COMPLAINT

Complaint and information by the City of Rockford, Illinois hereinafter called the complainant, being duly sworn, on oath says that on or about April 25, 1969, in the said Municipality, County and State, the offense of Disorderly Conduct in violation of Section 18.1(i) Art. _____ of Chapter 28 of the City Ordinances of said Municipality, was committed and that affiant has reasonable grounds to believe and does believe that Richard Dean Grayned hereinafter called the defendant, then and there was guilty of committing the same, in this, to wit: that Picketed or demonstrated on a public way within one hundred fifty (150) feet of a secondary school building while the school was in session and that said subject was not picketing with regards to any labor dispute. Contrary to the form of the statute in such case made and provided and against the peace and dignity of the People of the said Municipality and the said complaint therefore prays that a warrant may be issued for the arrest of the said defendant, and that he may be dealt with according to law.

Complainant City of Rockford by James L. Donohue

Address 401 West State Street (Room 203)
Rockford, Illinois 61101

Phone (815) 962-7083

Signed and sworn to before me _____, 19__

_____ [SEAL]

Magistrate

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE
17th JUDICIAL CIRCUIT
COUNTY OF WINNEBAGO
CITY OF ROCKFORD

AT LAW

Case No. 6328 and 6383

CITY OF ROCKFORD, PLAINTIFF

vs.

RICHARD DEAN GRAYNED and ANDREW M. FREEMAN, DEFENDANTS

MOTION TO AMEND COMPLAINT BY ADDITION OF ADDITIONAL CHARGE

COMES NOW the CITY OF ROCKFORD and requests this Court to allow it to include an additional charge of Disorderly Conduct under City Ordinance, Chapter 28, Section 18.1(i) in addition to the charge already levied of Chapter 28, Section 19.2(a). That a copy of said ordinance is attached to this motion to amend Complaint by addition of additional charge. A copy of Rockford City Ordinance, Chapter 28, Section 19.2(a) is also attached to this Motion.

CITY OF ROCKFORD
Plaintiff

By: _____
JAMES L. DONOHUE
Assistant City Attorney

STATE OF ILLINOIS)
) ss
COUNTY OF WINNEBAGO)

IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT
WINNEBAGO COUNTY, ILLINOIS

CITY OF ROCKFORD, PLAINTIFF

vs.

MARVIN WARD	No. 6316
WILLIAM IRA TRIPPLETT, JR.	6317
MONTIE E. THOMPSON	6318
HERBERT JEROME PARKER	6319
LEONARD DELL MCNEELY	6320
HENRY LOUIS MCINTOSH	6321
JIMMIE LEE KENT	6322
ROY L. KENT	6323
WILLIE T. KENT	6324
DUANE LESLIE JENKINS	6325
BENNIE HORTON	6326
RANDOLPH LARRY HAWTHORNE	6327
AARON A. DOTSON	6329
TOM ALVIN ALLEN	6330
HAROLD K. BELL	6331
GREGORY LEE BEDFORD	6381
MIKE ELLENA	6382
RICHARD DEAN GRAYNED	6383
JEFF LYNN HARRIS	6384
RALPH ANTHONY IMBERT	6385
PARKER PARNELL JENKINS	6386
OTHA LEE GRAYNED	6387
JEFF LYNN SMITH	6388
COLLIER RUTLEDGE, JR.	6389
ERNEST NELSON RICHARDS	6390
ROBERT PEOPLES, JR.	6391
MIKE RAY OLIVER	6392
EXCELL LEWIS	6393 and 7680
GARY SHERMAN COOPER	6394
WILLIAM ARTIS HUDSON	6395

CHARLES L. HAWKINS	6396
DWIGHT HALL	6397
GREGORY CECIL DUE	6398
JOHN DEREK BACON	6399
ALBERT CLAIBORNE	Unknown
BOBBY JOE CURTIS	7676
RAYMOND HAROLD HUGGARD	7678
LARRY LEE	7679
MIKE BELL	7673
JAMES ELLIS	7677

DEFENDANTS

MOTION

NOW COMES MARVIN WARD, WILLIAM IRA TRIPPLETT, JR., MONTIE E. THOMPSON, HERBERT JEROME PARKER, LEONARD DELL McNEELY, HENRY LOUIS McINTOSH, JIMMIE LEE KENT, ROY L. KENT, WILLIE T. KENT, DUANE LESLIE JENKINS, BENNIE HORTON, RANDOLPH LARRY HAWTHORNE, AARON A. DOTSON, TOM ALVIN ALLEN, HAROLD K. BELL, GREGORY LEE BEDFORD, MIKE ELLENA, JEFF LYNN HARRIS, RALPH ANTHONY IMBERT, PARKER PARNELL JENKINS, OTHA LEE GRAYNED, JEFF LYNN SMITH, COLLIER RUTLEDGE, JR., ERNEST NELSON RICHARDS, ROBERT PEOPLES, JR., MIKE RAY OLIVER, EXCELL LEWIS, GARY SHERMAN COOPER, WILLIAM ARTIS HUDSON, CHARLES L. HAWKINS, DWIGHT HALL, GREGORY CECIL DUE, JOHN DEREK BACON, ALBERT CLAIBORNE, BOBBY JOE CURTIS, RAYMOND HAROLD HUGGARD, LARRY LEE, MIKE BELL, JAMES ELLIS, and RICHARD DEAN GRAYNED by their attorneys McCOY, MING & BLACK and moves the Court to dismiss the charges pending against them for violation of Chapter 28, Section 19.2a of the Rockford Code of Ordinances on the ground that the ordinance is unconstitutional in that it violates the First and Fourteenth Amendments of the United States Constitution.

RICHARD GRAYNED by his attorneys McCOY, MING & BLACK moves the Court to dismiss the charge pending against him for violation of Chapter 28, Section 18.1(i) of the Rockford Code of Ordinances on the ground that the ordinance is unconstitutional in that it violates the First and Fourteenth Amendments of the United States Constitution.

Brief in support of this motion is hereto attached.

Marvin Ward, William Ira Tripplett, Jr., Montie E. Thompson, Herbert Jerome Parker, Leonard Dell McNeely, Henry Louis McIntosh, Jimmie Lee Kent, Roy L. Kent, Willie T. Kent, Duane Leslie Jenkins, Bennie Horton, Randolph Larry Hawthorne, Aaron A. Dotson, Tom Alvin Allen, Harold K. Bell, Gregory Lee Bedford, Mike Ellena, Jeff Lynn Harris, Ralph Anthony Imbert, Parker Parnell Jenkins, Otha Lee Grayned, Jeff Lynn Smith, Collier Rutledge, Jr., Ernest Nelson Richards, Robert Peoples, Jr., Mike Ray Oliver, Excell Lewis, Gary Sherman Cooper, William Artis Hudson, Charles L. Hawkins, Dwight Hall, Gregory Cecil Due, John Derek Bacon, Albert Claiborne, Bobby Joe Curtis, Raymond Harold Huggard, Larry Lee, Mike Bell, James Ellis, Richard Dean Grayned

By _____

McCoy, Ming & Black
Attorney for Defendants
123 West Madison Street
Chicago, Illinois 60602
FRanklin 2-1106

BRIEF

RICHARD GRAYNED is charged with violation of Chapter 28, Section 19.2a and Chapter 28, Section 18.1 (i) of the Rockford Code of Ordinances. The other captioned defendants are only charged with violation of Chapter 28, Section 19.2a. Both of the ordinances cited above are unconstitutional in that they violate the First and Fourteenth Amendments to the Federal Constitution.

The standards to be used in determining the constitutionality of the subject ordinances is most succinctly laid out in *Landry* v. *Daley* 280 F Supp 938 (USDC ND Ill Ed, 1967). Judge Will rendered a scholarly decision wherein he explained that the question of the constitutionality of a statute or ordinance depends upon its certainty and its breadth. By certainty he referred to whether it met the standards of Procedural Due Process meaning whether there was from the language of the statute fair notice of what action was prohibited so one could avoid violating it, and also whether there were sufficent standards for a proper adjudication of guilt. (See *Lanzetta* v *New Jersey* 59 Sup. Crt. 618 (1939)). By breadth, Judge Will referred to whether the statute satisfied Substantive Due Process meaning whether the normal meaning of the statutory language was so broad that it would allow the discretion of police or other officials to apply it to conduct protected by the Constitution. As stated in *Zwickler* v *Koota* 389 US 241, 88 SCT 391, 396 (1967) with regard to such construction

> "that 'a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms'"

The factors which Judge Will considered in *Landry* to determine whether the statute was clear and narrow within the requirements above outlined are as follows:

1. whether a substantial interest worthy of protection is apparent from the language of the statute;
2. whether the terms of the statute are susceptible to objective measurement by men of common intelligence;
3. whether those in charge of enforcement have only limited discretion;
4. if penal, whether some element of knowledge or intent to obstruct a state interest is required; and
5. whether clarity of the statute or ordinance depends on cross references to interrelated enactments.

Chapter 28, Section 19.2a of the Rockford Code of Ordinances provides in part that:

> "no person, while on public or private grounds adjacent to any building in which a school or any class thereof is in session shall willfully make or assist in the making of any noise or diversion which disturbs or tends to disturb the peace or good order of such school session or class thereof."

This ordinance is unconstitutional and void on its face in that it does not satisfy the requirements of procedural due process, with the corresponding result that it is too broad since it leaves discretion in the police or other officials to apply it to conduct which may be constitutional. (See *Stromberg* v *California* 283 US 359, 51 SCT 532 (1931)).

The City has a valid interest in having an orderly undisturbed school session conducive to the students learning processes. Therefore, some reasonable regulation would be proper to see that such an environment is maintained.

The ordinance passed by the City is not reasonable regulation. The language of this ordinance prohibiting the making of a "noise or diversion which disturbs or tends to disturb the peace or good order of such school session or class thereof" is vague and does not give fair notice of the prohibited conduct. A "diversion" is defined in Webster's Third New International Dictionary, 1966

Edition as "An act or an instance of diverting (as the mind or attention) from some activity or concern." A man of ordinary intelligence would not be able to determine objectively what conduct is prohibited by the ordinance. (See *Landry* v *Daley* 280 F Supp 986 DCND Ill Ed, 1968.) There may be various subjective views of what may tend to disturb the order of the school session or class. It is possible that any object standing or activity occurring outside the school building may divert or tend to divert the class or school session. Thus a person or persons could violate this statute merely by standing on the sidewalk adjacent to the school in brightly colored or unusual clothes.

Because of the vagueness of the language of the ordinance, there is a large diseretion left in the police to decide what activity may or may not disturb or tend to disturb the school session, and therefore the ordinance could be applied to the peaceful exercise of free speech and assembly and the right to petition for the redress of grievances. *Cox* v *State of Louisiana* 379 US 536, 85 SCT 453 (1965).

Chapter 28, Section 18.1(i) of the Rockford Code of Ordinances reads in part that:

> "a person commits disorderly conduct when he knowingly pickets or demonstrates in a public way within 150 feet of any primary or secondary school building while the school is in session . . . provided that this subsection does not prohibit the peaceful picketing of any school involved in a labor dispute . . ."

This ordinance is unconstitutional and void on its face for it is overbroad and violates the equal protection clause of the 14th Amendment.

As stated before a municipality has an interest in maintaining a peaceful and orderly school session. It also has the right to regulate traffic on the public way. Here it is unclear from the terms of this ordinance what interest with respect to the school session the City Council is seeking to protect. The ordinance allows picketing in labor disputes within 150 feet of the school building

during the school sessions, and allows all picketing and demonstrations outside of the 150 foot line during the school session. It is not therefore apparent from the ordinance what interest is protected by prohibiting non-labor picketing on a public way within 150 feet, which interest is not endangered by allowing labor picketing within and all picketing outside the 150 foot line. It is possible that this ordinance can be used to prohibit the exercise of constitutionally protected speech and assembly to which the defendants herein have a right (See *Cox* v *State of Louisiana* (Supra), *Edwards* v *South Carolina* 372 US 229, 83 SCT 680 (1963)) and therefore it is unconstitutional since it is overbroad.

The ordinance also is unconstitutional as a violation of the equal protection of the laws clause of the Fourteenth Amendment for it is discriminatory in that though the City may control traffic on its public ways, it must be reasonable. This ordinance does more than control traffic it discriminates in that it allows picketing on the public way within the 150 feet during labor disputes but prohibits all other picketing therein. This type of unconstitutional discrimination was noted in footnote 14 of the Court's decision in *Cox* v *State of Louisiana* (Supra) showing the statute was not a mere regulation of traffic but was intended to restrict speech. Justice Black in his concurring opinion discussed this exception as being an unconstitutional denial of free speech to some because the state was determining what views could be expressed on its streets which is censorship, as well as an unconstitutional classification which allowed some to speak while denying the right to others.

Respectfully submitted

McCoy, Ming & Black

STATE OF ILLINOIS)
) ss
COUNTY OF WINNEBAGO)

IN THE CIRCUIT COURT OF THE
17th JUDICIAL CIRCUIT
COUNTY OF WINNEBAGO
MAGISTRATE DIVISION

No. 6383 et al

CITY OF ROCKFORD, ILLINOIS, a Municipal Corporation,
PLAINTIFF

vs.

RICHARD GRAYNED, ET AL, DEFENDANTS

SUPPLEMENTAL BRIEF IN SUPPORT OF
DEFENDANTS MOTION TO DISMISS

Attached is a copy of a letter mailed to Judge Richard N. DeGunther which presents the City's position with respect to Defendant's Motion to Dismiss all of the cases arising out of the arrests of students on April 25, 1969.

The plaintiff cite the *Board of Education of Community Unit School District* v *Redding*, 32 Ill 2d 567, 207, NE 2d 427, 430 (1965). That case involved a suit by the Board of Education seeking an injunction against a strike and picketing by custodial employees of the school. The Supreme Court of Illinois stated the "scope of our review is limited to a consideration of whether such employees may strike against their school board employer and whether they may picket to support their strike." They then reversed the trial court and held that the strike by public employees should be enjoined as being illegal and that the picketing in support of this illegal strike should be enjoined.

The motion before this court does not concern picketing in support of an illegal strike, nor does it concern a suit for an injunction. The motion before this court seeks a decision of the issue of whether Sections 19.2a

and 18.1(i) are unconstitutional on their face as being vague and overboard. Plaintiff's cited case does not go to that issue either by factual situation or issues decided by the court.

Plaintiff's cited case does, however, support defendants position that Section 18.1(i) is an unconstitutional discrimination between labor unions and other organizations. This case indicates that labor unions do not have unrestricted rights to picket which are different from other persons rights, yet Section 18.1(i) gives them the special rights to unrestricted picketing within 150 feet of the school building while restricting others from exercising the rights.

Respectfully submitted

McCoy, Ming & Black

By _____

Sophia H. Hall

[Affidavit of Service (Omitted in Printing)]

NORTH, NORTH & OHLSON
LAWYERS
216 North Court Street
Rockford, Illinois
61103

September 8, 1969

Frank P. North
David A. North
Larry E. Ohlson

Area Code 815
Telephone 963-9619

Circuit Court Magistrate
Richard N. DeGunther
Winnebago County Court House
Rockford, Illinois

Re: City of Rockford vs. Grayned, #6383, and companion cases.

Dear Judge DeGunther:

This morning counsel for both parties took a considerable amount of the Court's time in presenting their arguments for and against Attorney Hall's Motion attacking the constitutionality of both Section 19.2A and Section 18.1 (i), Chapter 28 of the City of Rockford Code of Ordinances. As I emphasized this morning, it is the City's position that because of the extreme importance in maintaining an orderly and undisturbed atmosphere in the public schools, that as a reasonable exercise of the City's police power the City has the authority to pass and enforce the subject ordinances. The constitutional guarantees of free speech and freedom of assembly have no priority over the maintaining of orderly classrooms. Picketing is not a guaranteed right under all circumstances, as I pointed out to the Court this morning. The cases cited by Attorney Hall do not deal with the ordinances in issue, nor do her cases deal at all with the interest of a City in maintaining orderly schools.

There is a rather recent Illinois case, however, which the City feels supports its argument as to the City's overriding interest in maintaining effective schools in the face of the constitutional arguments heretofore made. The case is *Board of Education of Community Unit School Dist.* v. *Redding*, 32 Ill. 2d 567, 207 NE 2d 427. That case did not involve an interpretation of ordinances similar to those in issue, but it did concern a labor dispute between janitors who had been picketing schools in said district, thereby disrupting classes, and a Board of Education. The Supreme Court held that the trial court erred in failing to enjoin said picketing. In that case the usual constitutional arguments of free speech, etc. were made, but as the Court stated, at page 432 of NE Reports, "a State is not required to tolerate in all places and all circumstances even peaceful picketing by an individual." Most importantly in said case, on page 432 of the NE Reports, the Court comments as follows, "Apart from this, however, the effect of the influences exerted by the picketing was to impede and obstruct a vital and important governmental function—a proper and efficient education of our children—making its curtailment necessary to protect the patently overriding public interest."

It is just such a "patently overriding public interest" that motivated the City Council of Rockford to pass the subject ordinances for the protection of the schools as the preamble to Section 19.2A states. As to said section, a person who conducts himself so as to disturb a school in session runs the risk of prosecution under said ordinance and whether or not the conduct involved violates the ordinace depends entirely on the nature of the evidence as to what effect said conduct had on the classrooms in session. Therefore, the enforcement of Section 19.2A does not rest, as Attorney Hall states, in the discretion of the police who make an arrest pursuant to said ordinance, but it lies within the province of the

Court and the jury to determine whether or not, in fact, a violation has occurred.

Respectfully submitted,

/s/ Larry E. Ohlson
LARRY E. OHLSON
Assistant City Attorney

LEO:hh

cc: Atty. Sophia Hall
123 W. Madison Street
Chicago, Illinois

William E. Collins
Corporation Counsel
City Hall Building
Rockford, Illinois

CIRCUIT COURT—17th JUDICIAL CIRCUIT
MAGISTRATE DIVISION

Winnebago County Court House
Rockford, Illinois 61101

Magistrates
Robert G. Coplan
Robert G. Gemignani
Ralph H. Haen
Edwin J. Kotche
Robert E. Leake

Clerk of Court
Stanley W. Palmer
Telephone 965-7777
Area Code 815

September 16, 1969

Larry Ohlson
Attorney at Law
216 North Court St.
Rockford, Illinois

and

Sophia Hall
Attorney at Law
123 West Madison Street
Chicago, Illinois

In re: City of Rockford
vs. Richard Grayned
No. 6383

Dear Sir and Madam:

There are two charges against the defendant, Richard Grayned. Chapter 28, Section 19.2(a) provides in part that:

> "No person, while on public or private grounds adjacent to any building in which a school or any class thereof is in session shall willfully make or assist in the making of any noise or diversion which disturbs or tends to disturb the peace or good order of such school session or class thereof."

Chapter 28, Section 18.1(i) provides, in part, that:

> "A person commits disorderly conduct when he knowingly pickets or demonstrates in a public way within 150 feet of any primary or secondary school building while the school is in session . . . provided that this subsection does not prohibit the peaceful picketing of any school involved in a labor dispute . . ."

Miss Hall, attorney for the defendant, by her Brief and by her oral arguments has raised several points challenging the constitutionality of these Ordinances. Mr. Ohlson, on behalf of the City, has responded to these challenges by his oral argument and by his correspondence of September 8, 1969. The matters raised by counsel have been presented in a concise, scholarly and professional manner and do not require re-stating here. They are a part of the record.

I find that the language of Chapter 28, Section 19.2(a) is not so vague and indefinite that men of common intelligence will not be able to understand and regulate their conduct accordingly. I find Chapter 28, Section 18.1(i) contains reasonable and valid restrictions on the rights of picketing. I find that neither Ordinance violates the first or fourteenth amendment of the United States Constitution. I have, therefore, entered an order denying the defendant's motion to dismiss.

This decision reflects, to a great extent, my "philosophy" of the proper role of the trial court judge when the constitutionality of a law is challenged. I believe every possible presumption in favor of the constitutionality and validity of the law should be invoked and even if only a narrow interpretation of a Statute will preserve its constitutionality, it should be sustained.

The burden of persuasion that the law is unconstitutional is a heavy one. This is particularly true when, as here, the purpose of the law is to achieve some worthwhile end in the communities interest. That worthwhile end is, of course, the maintenance of an orderly and undisturbed atmosphere in the public schools.

This case is now scheduled for jury trial on Monday, October 6, 1969.

Very truly yours,

/s/ Richard N. DeGunther
RICHARD N. DEGUNTHER
Magistrate

RND:mg

No. City 6383

CITY OF ROCKFORD

vs.

RICHARD DEAN GRAYNED

VERDICT OF JURY

We, the jury, find the defendant, Richard Dean Grayned, Guilty of Disorderly Conduct, in that he picketed or demonstrated on a public way within one hundred fifty (150) feet of a secondary school building while the school was in session.

/s/ [Illegible]
/s/ Lester P. Doran
/s/ James D. Wells
/s/ Norma L. Gustafson
/s/ John H. Shipley
/s/ Max E. Ray
/s/ Kenneth Goodin
/s/ Everett Elliott
/s/ Mabel King
/s/ Jeannette Doherty
/s/ Pauline M. Clayton
/s/ Paul D. Forrest

_____

Foreman

3:40 4:30

No. City 6383

CITY OF ROCKFORD

vs.

RICHARD DEAN GRAYNED

VERDICT OF JURY

We, the jury, find the defendant, Richard Dean Grayned, Guilty of Wilfully causing diversion of good order of public school in session, in that while on school grounds and while school was in session, did wilfully make and assist in the making of a diversion which tended to disturb the peace and good order of the school session and class thereof.

/s/ [Illegible]
/s/ Lester P. Doran
/s/ James D. Wells
/s/ Norma L. Gustafson
/s/ John H. Shipley
/s/ Max E. Ray
/s/ Kenneth Goodin
/s/ Everett Elliott
/s/ Mabel King
/s/ Jeannette Doherty
/s/ Pauline M. Clayton
/s/ Paul D. Forrest

Foreman

[Filed Dec. 9, 1969, /s/ Anthony Colletti, Clerk of the Circuit Court, by /s/ C.C., Deputy]

COURT'S MEMORANDUM OF RULINGS ON MOTIONS

City of Rockford Motion to Amend Complaint by Addition of Additional charge (Filed August 12, 1969)—Heard and allowed

Defendant's motion to Dismiss filed October 6, 1969—Heard and denied.

Defendant's Petition filed October 6, 1969—heard and denied.

Defendant's Post-Trial Motion filed Nov. 6, 1969—Heard and denied.

(In addition, there was Defendant's Motion filed September 4, 1969. This motion was denied. The denial of that motion and the reasons therefore are a part of the record, appearing in the Court's letter of September 16, 1969.)

Docket No. 42895—Agenda 54—May, 1970

THE CITY OF ROCKFORD, APPELLEE

vs.

RICHARD GRAYNED, APPELLANT

MR. JUSTICE WARD delivered the opinion of the court:

On April 25, 1969, a demonstration was held in front of a high school in the city of Rockford. Richard Grayned, the defendant here, and 40 other demonstrators were arrested. A jury in the circuit court of Winnebago County found the defendant guilty of having violated, in April, 1969, sections 19.2(a) and 18.1(i) of the Code of the City of Rockford and he was fined $25 for each violation. A challenge to the constitutionality of these ordinances has been raised which gives this court jurisdiction on direct appeal.

Section 19.2(a) provides, insofar as is pertinent: "That no person, while on public or private grounds adjacent to any building in which a school or any class thereof is in session, shall willfully make or assist in the making of any noise or diversion which disturbs or tends to disturb the peace or good order of such school session or class thereof * * *."

The defendant first argues that this ordinance is unconstitutional on its face because its "terms are so vague that they fail to give the notice [of what conduct is prohibited] required by the Due Process Clause of the Fourteenth Amendment, and are so broad as to condemn the exercise of First Amendment freedoms." He complains relatedly that the ordinance vests unlimited discretion in law enforcement officials to determine the prohibited conduct. We have recently considered and sustained the constitutionality of ordinances and statutes which have been challenged on grounds of being vague and overly broad, including the grounds, which are complained of here, that proscribed conduct was not sufficiently specified and that police were given too broad a discretion in determining whether conduct was proscribed. (See *City of Chi-*

cago v. *Fort*, 46 Ill.2d 12; *City of Chicago* v. *Meyer*, 44 Ill.2d 1; *City of Chicago* v. *Lawrence*, 42 Ill.2d 461; *People* v. *Raby*, 40 Ill.2d 392.) Much of what we said there has application here and there is no necessity of repetitious or extended discussion. We do observe that while the defendant charges that terms appearing in the ordinance such as "noise" and "diversion" lack constitutional precision and are too indefinite, terms such as "alarm," "disturb," "interfere with," and "hinder" have been determined by us to comply with the constitutional requirements of specificity. (*City of Chicago* v. *Lawrence*, 42 Ill.2d 461; *People* v. *Raby*, 40 Ill.2d 392.) The terms here are not constitutionally objectionable.

It cannot be doubted that the State has a legitimate interest in preserving the peace and good order of its school system. (*Cf. Brown* v. *Louisiana*, 383 U.S. 131, 143, 15 L. Ed. 2d 637, 646, 86 S. Ct. 719; *Cox* v. *Louisiana*, 379 U.S. 559, 574, 13 L. Ed. 2d 487, 498, 85 S. Ct. 476.) While the ordinance may be susceptible to unconstitutional application, its constitutionality does not depend on conjectured misapplication. (*People* v. *Raby*, 40 Ill.2d 392, 397; *Landry* v. *Daley* (N.D. Ill. 1968), 280 F. Supp. 938, 960.) Although the argument that the ordinance has been unconstitutionally applied is not advanced in this case, our stated position is that we shall deal with extreme circumstances which might cause an unconstitutional application of an ordinance "if and when they arise." (*City of Chicago* v. *Fort*, No. 41945.) Our conclusion here is that the ordinance in question on its face is "a valid law dealing with conduct subject to regulation so as to vindicate important interests of society and that the fact that free speech is intermingled with such conduct does not bring with it constitutional protection." (*Cf. Cox* v. *Louisiana*, 379 U.S. 559, 564; 13 L. Ed. 2d 487, 492.)

It is next contended that section 19.2(a) is void because the penalty provisions applicable to the ordinance would exceed the power to impose penalties granted to municipalities by the legislature. Since section 19.2(a) itself does not contain a provision for a penalty, the general penalty section of the Code of Ordinances applies.

That section (City of Rockford Code of Ordinances, ch. 28, sec. 1.8) provides, so far as is pertinent: "It shall be unlawful for any person to violate or fail to comply with any provision of this Code and where no specific penalty is provided therefor, the violator shall be punished by a fine not less than ten dollars and not exceeding two hundred dollars or imprisonment for a term not exceeding six months or by both such fine or imprisonment. * * *."

The power of a municipality to provide for fines or penalties, as of the date of the violation here, did not include any authority to jail an offender, excepting the authority to jail in the event of failure to satisfy a fine or costs. (Ill. Rev. Stat. 1967, ch. 24, par. 1-2-1, par. 1-2-9.) Since a municipality can legislate only upon or with reference to that which has been authorized by the General Assembly (*People ex rel. Skokie Town House Builders, Inc.* v. *Village of Morton Grove*, 16 Ill.2d 183, 189), that portion of the Rockford ordinance which provided for incarceration attempted to exceed the conferred authority. We consider, however, that this defect does not affect the remainder of the penalty section, that is, section 1.8 absent the power to jail provision, or the section defining the substantive violation, that is, section 19.2(a). In *Brown* v. *City of Chicago*, 42 Ill.2d 501, 505, we said: "If what remains after the invalid portion is striken is complete in itself and capable of being executed wholly independently of that which is rejected, the invalid portion does not render void the entire ordinance unless it can be said that the city council would not have passed it with the invalid portion eliminated." We judge that the remainder of the ordinance is complete in itself and capable of being independently executed.

The last contention of the defendant is that his conviction for disorderly conduct under section 18.1(i) of the Rockford Code must be set aside for the reason that this section effects an unreasonable and arbitrary classification violative of the first and fourteenth amendments of the United States Constitution. The ordinance says: "A person commits disorderly conduct when he knowingly: * * * (i) Pickets or demonstrates on a pub-

lic way within 150 feet of any primary or secondary school building while the school is in session and one-half hour before the school is in session and one-half hour after the school session has been concluded, provided that this subsection does not prohibit the peaceful picketing of any school involved in a labor dispute; * * *." Rockford Code of Ordinances, ch. 28, sec. 18.1(i).

The defendant's complaint is directed at the part of the ordinance which provides that the peaceful picketing of a school involved in a labor dispute is not prohibited. However, we do not regard the classification in the ordinance as arbitrary. While a classification cannot, of course, be arbitrary, this court has said: "In order to authorize a judicial review of such classifications it must clearly appear that there is no fair reason for the law that would not require with equal force its extension to others not included. The legislature may determine upon what differences a distinction may be made for the purpose of statutory classification, between provisions otherwise having resemblance, if such power is not arbitrarily exercised and the distinction has a reasonable basis." (*Bagdonas* v. *Liberty Land and Investment Co.*, 309 Ill. 103, 109.) Too, we said in *People ex rel. Conservation District* v. *Lenover*, 43 Ill.2d 209, 219: "The burden of proving the arbitrariness of a classification is on the one who challenges it." And, at page 217: "Only if it can be said that the classification is clearly unreasonable and palpably arbitrary will a court declare the statute invalid." We cannot say that the city council of Rockford acted arbitrarily here in making the classification. Whether the council considered that the livelihood of persons involved in a labor dispute would typically be concerned or that it was familiar with the usual form of labor picketing or whether other considerations led to the classification we cannot say. But we can say it would be arbitrary for us to conclude from this distance under the circumstances that the act of the city was one of arbitrary discrimination.

The defendant would have us adopt the view of Justice Black in a concurring opinion in *Cox* v. *Louisiana*, 379 U.S. 559, 581, 13 L. Ed. 2d 487 at 502. There he

said that he regarded a statute's exemption of picketing and assembly by labor unions in protest of unfair treatment from the statute's operation as invidious discrimination. However, it must be observed that the expression was that of a single justice not that of the court. The court's decision on the point rested on other grounds.

Too, the statute there was a broad one, relating to the obstruction of public passageways, including streets, sidewalks and public buildings and it provided that labor organizations were exempt from its application. Justice Black considered that the statute was "trying to prescribe by law what matters of public interest people whom it allows on the streets may or not discuss." (379 U.S. at 581, 13 L. Ed. 2d at 502.) The statute here is a narrow one relating only to picketing or demonstrating within 150 feet of a school in session which is involved in a labor dispute. It does not have a potential consequence as the one Justice Black condemned.

Accordingly, the judgment of the circuit court of Winnebago County is affirmed.

Judgment affirmed.

MR. JUSTICE SCHAEFER, dissenting:

In my opinion section 18.1(i) of the Code makes arbitrary discrimination when it prohibits picketing on a public way within 150 feet of any school building but exempts the peaceful picketing of any school involved in a labor dispute. The considerations suggested in the opinion of the majority are not persuasive, and I am unable to conceive of any reason which would justify the discrimination effected by the ordinance.

UNITED STATES OF AMERICA

STATE OF ILLINOIS)
) ss.
SUPREME COURT)

AT A TERM OF THE SUPREME COURT, begun and held in Springfield, on Monday, the fourteenth day of September in the year of our Lord, one thousand nine hundred and seventy, within and for the State of Illinois.

PRESENT: ROBERT C. UNDERWOOD, CHIEF JUSTICE
JUSTICE WALTER V. SCHAEFER
JUSTICE DANIEL P. WARD
JUSTICE CASWELL J. CREBS
JUSTICE THOMAS E. KLUCZYNSKI
JUSTICE JOHN T. CULBERTSON, JR.
JUSTICE MARVIN F. BURT
WILLIAM J. SCOTT, ATTORNEY GENERAL
ROBERT G. MILEY, MARSHAL
ATTEST: JUSTIN TAFT, CLERK

BE IT REMEMBERED, that, to-wit: on the 29th day of September 1970, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said court, had and entered of record, to-wit:

No. 42895

CITY OF ROCKFORD, APPELLEE

vs.

RICHARD GRAYNED, APPELLANT

APPEAL FROM CIRCUIT COURT WINNEBAGO COUNTY 6383

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the

premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

THEREFORE, it is considered by the Court that the judgment of the Circuit Court of Winnebago County aforesaid, BE AFFIRMED IN ALL THINGS AND STAND IN FULL FORCE AND EFFECT, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said appellee recover of and from the said appellant costs by it in this behalf expended, to be taxed, and that it have execution therefor.

I, JUSTIN TAFT, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said court this ____ day of _____, 19__.

Clerk
Supreme Court of the
State of Illinois

IN THE SUPREME COURT OF ILLINOIS
January Term, A.D. 1970

No. 6383

CITY OF ROCKFORD, PLAINTIFF-APPELLEE

vs.

RICHARD GRAYNED, DEFENDANT-APPELLANT

Appeal from the Circuit Court of the Seventeenth Judicial Circuit, Magistrate's Division

Honorable Richard N. DeGunther, Judge Presiding

PETITION FOR REHEARING

The opinion of this Court was filed on September 29, 1970. Prior to this Court rendering its opinion defendant filed his motion for reargument of the case on the ground that he had not been given notice of the time of the oral argument. The denial of that motion so far has resulted in defendant being denied a full hearing on his appeal in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States.

This Court's opinion fails to deal with the specific language of Section 19.2a. Instead, it compares the language to language used in other ordinances held by it to be constitutional. The language used in these other ordinances, however, differs in purpose and effect from the language used in Section 19.2a thus the comparison is inappropriate.

In *City of Chicago* v. *Lawrence*, 42 Ill. 2d 461, 248 N.E. 2d 71 (1969) cited as authority in *City of Chicago* v. *Meyer*, 44 Ill. 2d 1, 253 N.E. 2d 400 (1969), the lan-

guage of the ordinance is directed to assisting the police officer in the performance of his duty by allowing him to arrest persons who hinder or interfere with him in that performance.

The terms "hinder" and "interfere with" as used in the ordinance are verbs which are confined and defined by the officers who are enforcing other laws, and who determine when their enforcement of those other laws is being hindered or interfered with. In that context this Court found those terms to be sufficiently descriptive of prohibited activities such that the terms were not violative of the Constitution.

Section 19.2a, which is at issue in this appeal, involves a very different context and purpose, one which is specifically directed toward activity like speech and assembly. The terms "noise" and "diversion" easily encompass the exercise of rights of free speech and peaceful assembly protected by the First Amendment. They are used in a context where the police officer is not the person who is protected, for the ordinance ostensibly protects other persons. The terms, however, are vague and broad, and they are not saved by being within the unique knowledge of the officer since he is not the subject of the ordinance. Thus the ordinance easily allows the officer discretion to deny rights of free speech and assembly. (DF.BF. 12-15). Consequently the circumstances of the two cases cited by this Court and the nature of the ordinance involved are not similar to Section 19.2a, and, therefore, any comparison of the terms, as a means of holding Section 19.2a constitutional, totally avoids the language of that ordinance.

The other cases cited by this Court, *City of Chicago* v. *Fort*, No. 41945, which cites *People* v. *Raby*, 40 Ill. 2d 392, 240 N.E. 2d 595 (1968), involve terms used in the Chicago disorderly conduct ordinance which is also so different from Section 19.2a that a comparison of the terms held constitutional there has no bearing on the constitutionality of the terms in Section 19.2a. In *People* v. *Raby* this Court said the ordinance was constitutional because it emphasized "unreasonable conduct" and that conduct's tendency to disturb. (40 Ill. 2d., 395, 397). The

terms "noise" and "diversion" cannot be compared to the terms "alarm" and "disturb" as they are used in the Chicago disorderly conduct ordinance. "Alarm" and "disturb" describe the *effect* of the "unreasonable conduct," whereas "noise" and "diversion" purport to describe the conduct itself. Thus this Court fails to deal with the question of whether the terms "noise" and "diversion" in Section 19.2a are so vague and broad that they fail to describe activity with sufficient clarity to avoid the unconstitutional application of the ordinance to the exercise of First Amendment freedoms.

The issue in this case is whether Section 19.2a is unconstitutional on its face. Defendant has shown that the language used is vague and overbroad. Not to make that determination in this case is to abandon this Court's responsibility to protect the exercise of rights guaranteed by the Constitution of the United States. This ordinance, through its vagueness, effectively prohibits any peaceful exercise of First Amendment freedoms by an average citizen who is concerned with the administration of schools in Rockford and seeks an alternative course of action to draw the attention of the community at large to his grievances, after other forms of petition for redress of grievances have failed.

This Court, in considering the question of whether Section 1.8 is void, states the issue as being whether the city council would have passed the law with the void part deleted (unnumbered page 3 of its opinion). After stating the issue, this Court ignores it. This Court instead usurps the legislative duties and prerogatives of the city council by picking and choosing from among the phrases within the section, and deciding which should be given effect and which should not.

The importance of the fact that this is a case dealing with the exercise of rights under the First Amendment becomes crucial when scrutinizing the classification by the city council of Rockford in distinguishing between the exercise of these freedoms by persons picketing in a labor dispute and persons picketing in support of other disputes such as minority student rights (DF BF 16). Section 18.1(i) imposes no limits on picketing where a

labor dispute is involved, except that it be peaceful. Yet other demonstrators are limited to picketing beyond 150 feet of the school premises. Labor has no special status or special right to the exercise of First Amendment freedoms and must be treated the same as other demonstrators. (DF BF 17-18). There is no reason for labor being given a special right for their concerns are no more important than a citizen's concern with curriculum or fair treatment of minority students. The First Amendment makes no distinction between what ideas are expressed by persons within its protection, yet this Court's decision would aid and abet the city council in making a distinction and thereby violating the Constitution.

CONCLUSION

We pray this Court to allow a rehearing on the issue of the constitutionality of these ordinances in view of the importance of preserving free speech and assembly for the good of all of us.

Respectfully submitted,

/s/ Sophia H. Hall
SOPHIA H. HALL
McCOY, MING & BLACK
123 West Madison Street
Chicago, Illinois 60602
Attorney for Defendant

IN THE SUPREME COURT OF ILLINOIS

No. 42895

CITY OF ROCKFORD, PLAINTIFF-APPELLEE

vs.

RICHARD GRAYNED, DEFENDANT-APPELLANT

AMENDMENT TO PETITION FOR REHEARING

In further support of his petition for rehearing in the above cause, defendant directs this Court's attention to the October 29, 1970 decision of the United States Court of Appeals for the Seventh Circuit in the case of *Mosley* vs. *Police Department of the City of Chicago, et al.* (See Exhibit A hereto attached). That case involved Chapter 193-1(i) of the Municipal Code of Chicago, which provides that:

> "A person commits disorderly conduct when he knowingly: . . . . (i) Pickets or demonstrates on a public way within 150 feet of any primary or secondary school building while the school is in session and one-half hour before the school is in session and one-half hour after the school session has been concluded, provided that the subsection does not prohibit the peaceful picketing of any school involved in a labor dispute; . . ."

As this Court can observe, the Chicago ordinance is in precisely the same language as Section 18.1(i) of the Rockford Code of Ordinances which was considered by this Court to be constitutional in its decision rendered September 29, 1970. The Seventh Circuit Court of Appeals, however, finds that

> ". . . Chapter 193-1(i) denies absolutely plaintiff's right to express his views by the mere carrying of a sign as he walks upon the public sidewalk adjoining the school during school hours, It is, therefore patently unconstitutional on its face."

Defendant believes that *Mosley* is controlling and in any event should be persuasive in this Court's consideration of the constitutionality of Section 18.1(i) and, therefore, reiterates his petition that this Court grant a rehearing of his appeal.

Respectfully submitted,

SOPHIA H. HALL
McCOY, MING & BLACK
123 W. Madison St.
Chicago, Illinois 60602
Franklin 2-1106

Attorney for Defendant

SUPREME COURT OF THE UNITED STATES

No. 70-5106

RICHARD GRAYNED, APPELLANT

v.

CITY OF ROCKFORD

ON CONSIDERATION of the motion of the appellant for leave to proceed in forma pauperis,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

October 12, 1971

SUPREME COURT OF THE UNITED STATES

No. 70-5106

RICHARD GRAYNED, APPELLANT

v.

CITY OF ROCKFORD

APPEAL from the Supreme Court of the State of Illinois.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted. The case is consolidated with No. 70-87 and a total of one hour is allotted for oral argument.

October 12, 1971

☆ U. S. GOVERNMENT PRINTING OFFICE: 1971 450854 325